

# New Immigration Judges Ethics Training 2018

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# Objectives

- Attain a general familiarity or refresher concerning the ethics rules and their application to you as a federal employee
- Know where to go for help (i.e. contact information)

# DOJ/EOIR – OGC Ethics

Who we are:

- Jean King – Deputy Designated Agency Ethics Official (DDAEO)
- Joe Schaaf – Chief Counsel of Admin Law
- Chris Cox – Associate General Counsel for Ethics
- Kelly Billingsley – Ethics Program Specialist

# Training Requirements

- Initial Ethics Training
  - Within 90 days of joining the agency
- Annual Ethics Training
  - Financial Disclosure Form Filers
    - Public filers (OGE Form 278) – IJ-2 or above (Due May 15<sup>th</sup>)
    - Confidential filers (OGE Form 450) – IJ-1 only (Due Feb 15<sup>th</sup>)
  - All other employees – per new agency policy (2017)
- Post-Government Consultation (optional)
  - Upon request before leaving the agency

# OGE-278 Filers (278e)

- Public Financial Disclosure Report(s)
  - New entrants – Due w/in 30 days of entering new position
  - Annual/Incumbent – Due May 15<sup>th</sup>
  - Termination – Due w/in 30 days of departing position
- Late fees and extensions
  - \$200 mandatory late fee imposed by OGE
  - Extension granted for “good cause shown.”
- Periodic Transaction Reports – 278T Form
  - Monthly report for purchases or sales of stocks, bonds, commodity futures, other securities over \$1,000
  - Includes spouse and dependent child’s transactions
  - Reportable w/in 45 days of transaction or 30 days of being notified

# OGE-450 Filers

- Confidential Financial Disclosure Report(s)
  - New entrants – Due w/in 30 days of entering new position
  - Annual/Incumbent – Due February 15<sup>th</sup>
  - Termination – None
- Late fees and extensions
  - No late filing fee
  - Extension granted for “good cause shown.”
- Generally, less information is required.
- Do not over-report. Make sure you recognize what doesn't have to be reported. Example – TSP does not have to be reported.
- No Periodic (Monthly) Transaction Reports.



# OGE-450 Filers

## • Key Reminders

- Supervisor must review and sign report before submitting to Ethics.
- May now electronically sign report OR can print, sign and PDF the report. Then e-mail the report to [EOIR.Integrity@usdoj.gov](mailto:EOIR.Integrity@usdoj.gov)
- Annuities – Note if it is fixed or variable (underlying if variable).
- Life Insurance
  - Report underlying holdings of investment life insurance (variable policy).
  - If whole life policy, then note that on the report.
- Defined contribution plans (401(k) or an IRA)
  - Report the underlying holdings, except diversified mutual funds.
  - If plan only has diversified mutual funds, note that on the report.

# Key Principles of Ethical Conduct

(5 C.F.R. § 2635.101)

- Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of nonpublic information to further any private interest.
- An employee shall not solicit or accept any gift or other item of monetary value from a prohibited source or from anyone offering a gift because of the employee's official position.



# Key Principles of Ethical Conduct

(5 C.F.R. § 2635.101)

- Employees shall not use public office for private gain.
- Employees shall act impartially and not give preferential treatment to any private organization or individual.
- Employees shall not use Federal property for other than official activities.
- Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards.

# Ethics Topics

- Financial Conflicts of Interest
- Appearance of Bias
- Other Criminal Statutes
- Gifts
- Outside Activities
- Misuse of Position
- Political Activities
- Seeking Employment

# Key Ethics Rules

Conflicts of Interest



# Conflicts of Interest

Financial Conflicts of Interest

Appearance of Bias

# Financial Conflicts of Interest

- 18 U.S.C. § 208

- Criminal offense for any executive branch employee to:
  - Participate personally and substantially
  - in a particular matter
  - in which the employee has a personal or imputed financial interest
  - if the particular matter will have a direct and predictable effect on that interest
- Includes participation through decision, approval, recommendation or advice as a Government employee.



# Participation

- *Personal* means directly, either individually or in combination with others
- *Substantial* means that involvement is of significance to the matter; an issue of substance
- Includes participation through decision, approval, recommendation or advice
- As a Government employee

# Particular Matters vs. General Matters

- Particular Matter includes:
  - Particular Matter of General Applicability (PMGA):
    - Focused on the interests of a discrete class, but does not involve specific parties (standards, procedures, policy, etc.)
  - Specific Party Matter:
    - Proceeding or request for a ruling or other determination that affects the legal rights of identified parties (each immigration case, also could be a grant or contract, etc.)
- Does not include General Matters:
  - Consideration of broad policy options that are directed to a large and diverse group of persons

# Financial Interest

- Following the money! It's not the value of the asset or interest, it's the effect.
- Direct and Predictable Effect: Is there a close casual link between the outcome or impact of a matter and any expected effect on the financial interest?
- Includes the employee's financial interest and those interests which are imputed to the employee (for purposes of this statute).

# Imputed Interests

- Spouse
- Minor Child
- General Partner
- Organization/Entity for which the employee currently serves as officer, director, trustee, general partner or employee (fiduciary duty)
- A person with whom the employee is negotiating for employment or has an arrangement for future employment (seeking employment)

# Financial Conflicts of Interest

- Common financial conflicts arise out of:
  - Spousal employment
  - Stock and retirement accounts
  - Agreements for future payments
  - Future employment negotiations/arrangements
- If you ever suspect you have a financial conflict, stop working on the matter (or don't begin) and contact our office immediately.



# Resolving Conflicts

- Several ways to resolve a financial conflict of interest:
  - Recusal/Disqualification (recommended method)
  - Divestiture of financial interest
  - Regulatory Exemption(s)
  - Agency grants permission – Waiver (rarely used)

# Appearance of Loss of Impartiality

- 5 C.F.R. § 2635.502(a)
- An employee shall not participate in a **specific party matter**:
  - that will have a direct and predictable effect on the financial interest of a member of the employee's household; or
  - where a person with whom the employee has a **covered relationship** is a party or represents a party.
- Also consider other circumstances where a reasonable person with knowledge of the relevant facts may question the employee's impartiality.

# Covered Relationships

- An employee has a covered relationship with:
  - Person with whom the employee has a business, contractual or other financial relationship
  - A member of the employee's household, or a relative with whom the employee has a close personal relationship
  - Person (entity) for whom the employee has, **within the last year**, served as officer, director, consultant, contractor or employee
  - Organization in which the employee is an active participant (not just paying dues)

# Covered Relationships (cont.)

- An employee also has a covered relationship with:
  - Any organization/entity that the employee's:
    - Spouse
    - Parent
    - **Dependent** child
  - is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee

# Resolving Appearance Concerns

- A few ways to resolve an appearance of bias concern:
  - Recusal/Disqualification (recommended method)
  - Agency grants permission – Authorization
    - Referred to as a 502(d) authorization.
    - Agency may issue authorization to permit employee to participate in a specific party matter if agency determines, based on all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that the agency's programs may be questioned.



# Key Ethics Rules

Other Criminal Statutes

# Other Criminal Statutes

- Applicable statutes:
- Bribery: 18 USC § 201
- Representation: 18 USC § 203, 205
- Post-employment: 18 USC § 207
- Salary Supplementation: 18 USC § 209

# Bribery

- 18 USC § 201
- Prohibits all employees from seeking, accepting or agreeing to receive anything of value in return for being influenced in the performance of an official act.

# Representational Restrictions

- 18 U.S.C. § 203, 205
- Section 203: An employee may not receive compensation for representational services before any Federal agency/court on a matter in which the U.S. is a party or has a direct and substantial interest.
- Section 205: An employee may not act as an agent or attorney for any other party before any Federal agency/court on a matter in which the U.S. is a party or has a direct and substantial interest.

# Post Employment

- 18 U.S.C. § 207

- Section 207(a)(1): Lifetime ban on a former employee representing anyone else before a Federal court/agency in a specific party matter that the employee worked on while with the Government.
- Section 207(a)(2): 2 year ban where the matter was under the former employee's "official responsibility."
- Note – Both sections apply only to specific party matters.
- OGE-278 filers: Termination report due w/in 30 days of departing government position.



# Salary Supplementation

- 18 USC § 209
- Prohibits all employees from receiving any salary or contribution to or supplementation of salary from anyone but the Federal government as compensation for services as a government employee.

# Key Ethics Rules

Other Conduct Regulations

# Gifts from Outside Sources

- General rule – 5 C.F.R. § 2635.202
- An employee shall not, directly or indirectly, solicit or accept a gift from a prohibited source or given because of the employee's official position.
- Prohibited source:
  - Person seeking official action by the agency;
  - Does business or seeks to do business with the agency;
  - Has interests that may substantially affected by performance of employee's official duties; or
  - Is an organization a majority of whose members are described above.

# Gifts from Outside Sources

- Considerations for Declining Otherwise Permissible Gifts
- Would a reasonable person question your integrity or impartiality as a result of accepting the gift?
  - Consider whether:
    - (1) the gift has a high market value;
    - (2) the timing of the gift creates the appearance that the donor is seeking to influence official action;
    - (3) the gift is being offered by a person who has interests that may be affected by the performance of your duties; and
    - (4) acceptance of the gift would provide the donor with significantly disproportionate access to the government.

# Gifts from Outside Sources

- Excluded from the gift rules (not a gift):
  - Modest items of refreshments (soft drinks, coffee, donuts, etc.) Does not include alcoholic beverages
  - Greeting cards and plaques (little intrinsic value)
  - Loans at rates generally available to the public
  - Government discounts (hotels, phone plans, etc.)
  - Rewards and prizes in competitions open to public
  - Pensions and other benefits from prior employer
  - Anything for which you or the Government have paid
  - Free attendance if speaking in official capacity (NEW)



# Gifts from Outside Sources

- Exceptions to the gift rules:
  - Items worth \$20 or less
  - Gifts based on personal relationship
  - Awards and honorary degrees
  - Gifts based on outside business relationship
  - Widely-attended gatherings (WAG)
- Proper disposition of prohibited gifts:
  - Return the item to the donor or pay market value
  - If perishable – may donate, destroy or share within office
  - Option to destroy gifts with market value < \$100



# Gifts Between Employees

- General rule – 5 C.F.R. § 2635.302
- An employee may not:
  - Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or
  - Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.
- Also may not accept a gift from a lesser-paid employee, unless the person giving the gift is not a subordinate and the gift is based on a strictly personal relationship.

# Gifts Between Employees

- Exceptions to the gift rules:
  - Occasional gifts of \$10 or less (other than cash) for birthdays and holidays, or personal hospitality at a residence (pooling is not permissible).
  - Items such as food and refreshments to be shared in the office among several employees.
  - Gifts appropriate to the occasion may be given/accepted for special, infrequent occasions (marriage, illness, or birth or adoption of child) or upon occasions that terminate subordinate/official superior relationship (pooling is permissible).

# Outside Activities/Employment

- General rule – 5 C.F.R. § 2635.802
- An employee shall not engage in outside employment or any other outside activity that conflicts with his or her official duties.

# Outside Activities/Employment

- Supplemental regulation – 5 C.F.R. § 3801.106
- DOJ employees are prohibited from engaging in outside employment that involves:
  - The paid practice of law;
  - Any criminal matter (Federal, State, or local); or
  - Matters in which DOJ is or represents a party, witness, litigant, investigator or grant-maker.

# Outside Activities/Employment

- Prior written approval required for:
- The unpaid practice of law (uncompensated and in the nature of community service); or
- Any outside employment that involves a subject matter, policy, or program that is in his component's area of responsibility.
- EOIR policy – Approval required for speaking engagements in personal (or official) capacity.



# Public Speaking – NEW Process

- Your supervisor must submit the “Speaking Engagement Request” and “Supervisor’s Checklist” forms to the EOIR Speakers Mailbox, on your behalf, with their approval, prior to participating in the event.
- Capacity is determined by your supervisor:
  - Official
  - Purely Personal
- You are cleared to participate in the event once you receive guidance from the Speaking Engagement Team (SET).



# Outside Activities/Employment

- Outside Teaching, Speaking and Writing Activity
- An employee shall not receive compensation from any source other than the Government for teaching, speaking, and/or writing that relates to the employee's official duties.
- Exception for teaching. Can receive compensation if:
  - Multiple presentations; and
  - Regularly established curriculum; or
  - A program of education or training sponsored and funded by Fed Govt. or by State or local govt.

# Outside Activities/Employment

- Relates to official duties if:
  - Activity undertaken as part of official duties;
  - Information conveyed through activity draws substantially on non-public information;
  - Invitation was based upon employee's official position rather than their expertise on the subject matter; or
  - Invitation from source that would be substantially affected by the performance of the employee's official duties.

# Misuse of Position

- No use of public office for private gain.
- Employee may not use official title or position to imply that EOIR endorses or sanctions their private activities.
- Employee may not disclose non-public information.
- Personal fundraising: employee may not personally solicit or otherwise conduct fundraising in the Federal workplace.
  - Exceptions: Combined Federal Campaign (CFC) and passive collection of gifts in kind (i.e. clothes, toys, food).

# Use of Government Resources

- Permitted Use:
  - Generally, you may engage in reasonable incidental use of government equipment, if:
    - No additional cost to the government
    - No interference with official business
- Prohibited Use:
  - Political Activity
  - Commercial purposes
  - Illegal purposes or gambling
  - Fundraising (other than Combined Federal Campaign)
  - Offensive or inappropriate web content or email



# Political Activity

- The Hatch Act prohibits all employees from:
  - Political fundraising
  - Using their official authority or influence to interfere with or affect the results of an election, including:
    - Using their title, position, or agency affiliation when engaging in political activity
    - Coercing subordinates into political activity
  - Using government resources for political activity (e-mail, copiers)
  - Being a candidate for partisan political office
  - Soliciting/discouraging the political activity of anyone with business before EOIR
  - \*\*Consider the office environment even for political discussions.



# Political Activity

- Prohibited on-duty political activity includes:
  - Making political contributions
  - Posting a comment to a blog or social media site that advocates for or against a partisan political party, candidate, or group
  - Using any e-mail account or social media to distribute content that advocates for or against a partisan political party, candidate, or group
  - Distributing campaign materials or items
  - Performing campaign related chores
  - Displaying partisan political buttons, T-shirts, signs, or other items

# Political Activity

- Permitted activities – off duty, away from work and in personal capacity includes:
  - Managing a political campaign
  - Making political contributions
  - Voting and voter registration drives
  - Canvassing for votes
  - Attend political fundraisers and be active in rallies and meetings
  - Be a candidate for public office in non-partisan elections
  - Expressing your personal opinions about candidates and issues
  - Displaying a political bumper sticker on your personal car

# Seeking Employment

- An employee may not:
  - Participate in a particular matter that will have a direct and predictable effect on the financial interests of a person/company with whom they are negotiating with or have an arrangement concerning prospective employment (18 U.S.C. § 208); or
  - Participate in a specific-party matter if one of the parties in the matter is, or represents, a person/entity with whom the employee is seeking employment if a reasonable person would question their impartiality in the matter (5 C.F.R. § 2635.502).
- Contact our office if this situation arises for further guidance.
- Post-government rules apply once an employee leaves EOIR.

# Contact Information

U.S. Dept. of Justice  
Executive Office for Immigration Review  
5107 Leesburg Pike, Suite 2600  
Falls Church, VA 22041  
Phone: (703) 305-0322  
Fax: (703) 605-0491

- Within EOIR's network: Outlook address book, select "EOIR, Ethics"
- Outside EOIR's network: [EOIR.Ethics@usdoj.gov](mailto:EOIR.Ethics@usdoj.gov)
- Submitting the 450 report: [EOIR.Integrity@usdoj.gov](mailto:EOIR.Integrity@usdoj.gov)



The End



## **ETHICS AND PROFESSIONALISM GUIDE FOR IMMIGRATION JUDGES**

### ***Preamble***

To preserve and promote integrity and professionalism, Immigration Judges employed by the Executive Office for Immigration Review (EOIR) should observe high standards of ethical conduct, act in a manner that promotes public confidence in their impartiality, and avoid impropriety and the appearance of impropriety in all activities.

### **I. Introduction**

The provisions in this Guide are binding on all Immigration Judges employed by the Executive Office for Immigration Review. Violations of these provisions may not be used to challenge the rulings of an Immigration Judge. These provisions do not create any rights or interests for any party outside of the Department of Justice, nor may violations of these provisions furnish the basis for civil liability or injunctive relief. The provisions in this Guide do not supersede the personnel or disciplinary rules, or management policies, of the Executive Office for Immigration Review, the Department of Justice, and/or the United States Government. Similarly, this Guide does not affect the applicability or scope of the provisions of the Standards of Ethical Conduct for Executive Branch Employees, or the rules or code(s) of professional responsibility applicable to an Immigration Judge. 5 C.F.R. § 2635.101.

### **II. Standards of Conduct**

(5 C.F.R. Parts 2635, 3801; 28 C.F.R. Part 45)

An Immigration Judge shall comply with the standards of conduct applicable to all attorneys in the Department of Justice, including the Standards of Ethical Conduct for Employees of the Executive Branch, codified in Title 5 of the Code of Federal Regulations, and the Department's supplemental regulations at 5 C.F.R. Part 3801 and 28 C.F.R. Part 45.

### **III. Ethics Guidance**

(5 C.F.R. § 2635.107(b))

Immigration Judges are encouraged to seek ethics opinions to ensure that their conduct comports with applicable rules and regulations. When an Immigration Judge requests ethics guidance from the Office of Government Ethics, the Departmental Ethics Office, the Office of General Counsel of the Executive Office for Immigration Review, or the Professional Responsibility Advisory Office, the Immigration Judge should endeavor to disclose all legally relevant facts. 5 C.F.R. § 2635.107(b).

*Note: Disciplinary action will not be taken against any Immigration Judge who has engaged in conduct in good faith reliance upon the advice of an agency ethics official provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.*

#### **IV. Professional Competence**

**An Immigration Judge should be faithful to the law and maintain professional competence in it.**

*Note: In order to “maintain professional competence” in the law, Immigration Judges should strive to be knowledgeable about immigration law, should be skillful in applying it to individual cases, and should attempt to engage in preparation that is reasonably necessary to perform an Immigration Judge’s responsibilities.*

#### **V. Impartiality**

**(5 C.F.R. § 2635.101(b)(8))**

**An Immigration Judge shall act impartially and shall not give preferential treatment to any organization or individual when adjudicating the merits of a particular case. An Immigration Judge should encourage and facilitate pro bono representation. An Immigration Judge may grant procedural priorities to lawyers providing pro bono legal services in accordance with Operating Procedures and Policies Memorandum (OPPM) 08-01.**

#### **VI. Appearance of Impropriety**

**(5 C.F.R. § 2635.101(b)(14))**

**An Immigration Judge shall endeavor to avoid any actions that, in the judgment of a reasonable person with knowledge of the relevant facts, would create the appearance that he or she is violating the law or applicable ethical standards.**

#### **VII. Reporting Misconduct**

**(5 C.F.R. § 2635.101(b)(11); 28 C.F.R. § 45.12)**

**An Immigration Judge shall disclose waste, fraud, abuse, and corruption to appropriate authorities, such as a supervisor, or to the Office of the Inspector General. Immigration Judges, like all Department employees, also have a duty to report allegations of misconduct by Department of Justice attorneys, as explained by Chapter 1-4.100 of the United States Attorneys’ Manual (USAM). In addition, Immigration Judges have a duty to report allegations of**



misconduct by non-Department attorneys or judges, as explained by Chapter 1-4.150 of the USAM.

### **VIII. Acting in a Neutral and Detached Manner**

An Immigration Judge should not be swayed by partisan interests or public clamor.

### **IX. Acting with Judicial Temperament and Professionalism**

An Immigration Judge should be patient, dignified, and courteous, and should act in a professional manner towards all litigants, witnesses, lawyers and others with whom the Immigration Judge deals in his or her official capacity, and should not, in the performance of official duties, by words or conduct, manifest improper bias or prejudice.

*Note: An Immigration Judge should be alert to avoid behavior, including inappropriate demeanor, which may be perceived as biased. The test for appearance of impropriety is whether the conduct would create in the mind of a reasonable person with knowledge of the relevant facts the belief that the Immigration Judge's ability to carry out his or her responsibilities with integrity, impartiality, and competence is impaired.*

*Note: An Immigration Judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the immigration process into disrepute. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant reference to personal characteristics. Moreover, an Immigration Judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Immigration Judges are not precluded from making legitimate reference to any of the above listed factors, or similar factors, when they are relevant to an issue in a proceeding.*

*Note: An Immigration Judge has the authority to regulate the course of the hearing. See 8 C.F.R. §§ 1240.1(c), 1240.9. Nothing herein prohibits the Judge from doing so. It is recognized that at times an Immigration Judge must be firm and decisive to maintain courtroom control.*

## X. Membership in Organizations

An Immigration Judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or disability.

*Note: Membership of an Immigration Judge in an organization that practices invidious discrimination may, at a minimum, give rise to perceptions that the Immigration Judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which Immigration Judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See New York State Club Ass'n Inc. v. City of New York, 487 U.S. 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987); Roberts v. United States Jaycees, 468 U.S. 609 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus, the mere absence of diverse membership does not by itself demonstrate invidious discrimination unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination.*

## XI. Impartiality in Performing Official Duties (5 C.F.R. §§ 2635.501 to 2635.503)

An Immigration Judge may not participate, without authorization, in a particular matter involving specific parties which the Immigration Judge knows is likely to have a direct and predictable effect on the financial interest of members of the Immigration Judge's household or in which the Immigration Judge knows a person with whom the Immigration Judge has a covered relationship is or represents a party.

An Immigration Judge has a covered relationship with: (a) a person with whom the Immigration Judge has or seeks a business, contractual, or other financial relationship that involves other than a routine consumer transaction; (b) a person who is a member of the Immigration Judge's household, or a relative with whom the Immigration Judge has a close relationship; (c) a



present or prospective employer of a spouse, parent or child; or (d) an organization which the Immigration Judge now serves, or has served, as an employee or in another capacity, within the past year.

An Immigration Judge is banned from adjudicating any cases in which he/she participated personally and substantially prior to becoming an Immigration Judge. An Immigration Judge may not adjudicate a case if he/she: has personal knowledge of the disputed facts; participated as counselor or advisor in the case; or expressed an opinion concerning the merits of the particular case in controversy. A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of the above provision. However, an Immigration Judge formerly employed by a government agency should disqualify himself or herself in a proceeding if the Immigration Judge's impartiality might reasonably be questioned because of such an association.

If a conflict of interest exists, in order for the Immigration Judge to participate in the matter, the EOIR Director or his/her designee must make a determination that the interests of the government in the Immigration Judge's participation outweigh the concern that a reasonable person may question the integrity of the Department's programs and operations. The determination must be made in writing.

If a conflict of interest exists, and the judge has obtained a determination from the EOIR Director or his/her designee that the judge may continue to participate in the matter, the conflict must be disclosed to the parties, either orally on the record or in writing. If an Immigration Judge disqualifies himself or herself from a case that has been assigned to him or her, he or she must do so in a decision in writing or orally on the record before the parties and otherwise follow all the procedures delineated in OPPM 05-02, Procedures for Issuing Recusal Orders in Immigration Proceedings, or any superseding OPPM.

## **XII. Use of Public Office for Private Gain** **(5 C.F.R. § 2635.702)**

Immigration Judges may not use their public office for their own private gain or the gain of persons or organizations with which they are associated personally. An Immigration Judge's position or title should not be used: to coerce; to endorse any product, service or enterprise; or to give the appearance of government sanction. Regarding a request for a letter of reference or recommendation, an Immigration Judge may only use his or her official title and stationery for someone he or she has dealt with in the course of federal employment or someone he or she is recommending for federal employment.



**XIII. Use of Nonpublic Information**  
**(5 C.F.R. § 2635.703)**

An Immigration Judge may not engage in a financial transaction using nonpublic information, nor allow the use of such information to further his or her private interests or those of another. Nonpublic information is information an Immigration Judge gains by reason of federal employment that he or she knows or reasonably should know has not been made available to the general public and is not authorized to be made available upon request.

**XIV. Use of Government Property**  
**(5 C.F.R. § 2635.704)**

An Immigration Judge has a duty to protect and conserve government property and shall use government property only for authorized purposes.

*Note: Department of Justice employees are generally authorized to make personal use of most office equipment and library facilities where the cost to the Government is negligible and on an employee's own time. 28 C.F.R. § 45.4. Under the Department's policy on the use of its electronic mail systems, an employee may send a short, personal message to another employee. However, personal messages sent to groups of people and messages to disseminate information on non-Government activities, such as charitable events, religious observances and personal businesses, are prohibited.*

**XV. Use of Official Time**  
**(5 C.F.R. § 2635.705)**

An Immigration Judge shall use official time in an honest effort to perform official duties. Generally, personal activities should not be conducted during duty hours. An Immigration Judge may not use the official time of another employee for anything other than official business. This section does not apply to official time under section 7131 of the Federal Service Labor-Management Relations Statute.

**XVI. Conflicting Financial Interest**  
**(5 C.F.R. §§ 2635.401 to 2635.403)**

An Immigration Judge is prohibited from participating in any matter in which he or she has a financial interest. In addition to an Immigration Judge's own financial interest, certain interests are considered his or hers (i.e., "imputed" to him or her), including those of a spouse, minor child, general partner or an organization for which the Immigration Judge serves as an officer, director,

trustee, general partner, or employee. However, an Immigration Judge may participate in such a matter if he or she is granted a waiver. Immigration Judges should contact their Deputy Designated Ethics Officer about possible financial conflicts of interest.

If an Immigration Judge has a financial conflict of interest, remedies include disqualification, divestiture, or a waiver of the disqualification under 18 U.S.C. § 208. Before divesting, however, he/she should determine whether he/she is eligible for a Certificate of Divestiture from the Office of Government Ethics, which would allow him/her to defer paying capital gains tax on the sale of the asset. 5 C.F.R. §§ 2634.1001-1004. A waiver may be granted if the financial interest is found to be not so substantial as to affect the integrity of the Immigration Judge's services.

*Note: Immigration Judges (levels IJ-2 and above) employed by the Executive Office for Immigration Review are required to file public financial disclosure reports pursuant to statute every year. Financial disclosure reports are used to identify potential or actual conflicts of interest. If the ethics official charged with reviewing an Immigration Judge's report finds a conflict, the ethics official should, upon consultation with the Immigration Judge's supervisor, decide on the appropriate remedy.*

*Note: In order to comply with the applicable law and regulations regarding financial reporting and disqualification, Immigration Judges must inform themselves about their personal financial interests, as well as the personal financial interests of spouses and minor children.*

#### **XVII. Outside Employment and Activities** (5 C.F.R. §§ 2635.801 to 2635.803)

An Immigration Judge shall not engage in any outside employment or other outside activity that conflicts with his or her official duties. Immigration Judges should regularly reexamine their avocational activities and the organizations with which they are affiliated to ensure that they do not lead to the perception of partiality on the part of an Immigration Judge.

#### **XVIII. Representation before Federal Agencies** (5 C.F.R. § 2635.801)

An Immigration Judge may not represent anyone before a Federal agency or official, or any court, with or without compensation, on a matter in which the United States is a party or has a substantial interest. This prohibition applies whether the Immigration Judge renders the representation personally or



shares in compensation from someone else's representation. 18 U.S.C. §§ 203 and 205.

Nothing in this Article shall prohibit National Association of Immigration Judges (NAIJ) representatives from acting on behalf of NAIJ, or any of its members or any individual in its collective bargaining unit, as otherwise allowed by law. *See, e.g.*, 18 U.S.C. §§ 205(d), 205(i); 5 U.S.C. § 7102(1).

**XIX. Practice of Law**  
(5 C.F.R. § 3801.106)

An Immigration Judge may not engage in the private practice of law unless it is uncompensated and in the nature of community service, or unless it is on behalf of the Immigration Judge himself or herself, or on behalf of the Immigration Judge's parents, spouse, or minor children. An Immigration Judge is prohibited from engaging in the paid practice of law and from engaging in any employment that involves a criminal matter, be it Federal, state or local, or any matter in which the Department is or represents a party, witness, litigant, investigator, or grant-maker. These prohibitions may be waived by the Deputy Attorney General if the restrictions will cause undue personal or family hardship, unduly prohibit a DOJ employee from completing a professional obligation entered into prior to Government service, or unduly restrict the Department from securing necessary and uniquely specialized services. All requests for a waiver of these prohibitions should be made through EOIR's Office of General Counsel.

**XX. Serving as an Expert Witness**  
(5 C.F.R. § 2635.805)

An Immigration Judge may not serve, other than on behalf of the United States, as an expert witness, paid or unpaid, in any proceeding before the United States in which the United States is a party or has a direct and substantial interest, unless specifically authorized by the Designated Agency Ethics Official. Opinion testimony or testimony as to procedures or practice given in any arbitration, disciplinary action, or proceeding under or with respect to a labor agreement or any action under the Federal Labor laws is not "expert testimony" within the meaning of this section.

**XXI. Teaching, Speaking, and Writing**  
(5 C.F.R. § 2635.807)

Generally, an Immigration Judge may not be compensated for speaking or writing about a subject matter that relates to his or her official duties. A subject matter relates to an Immigration Judge's official duties if it deals in

significant part with a matter to which the Immigration Judge is presently assigned or has been assigned in the last year; any ongoing or announced policy, program or operation of the Department; or in the case of a non-career employee, the general subject matter primarily affected by the programs and operations of the Department. 5 C.F.R. § 2635.807. Under 5 C.F.R § 3801.103, an Immigration Judge would only be prohibited from receiving compensation for speaking or writing on a subject matter related to EOIR's policies, programs or operations, not the entire Department's. An Immigration Judge may receive compensation for teaching, even if the course relates to an Immigration Judge's official duties, if the course requires multiple presentations and is offered as part of the regularly established curriculum of: an institution of higher education; an elementary or secondary school; or a program sponsored and funded by the Federal Government or by a state or local government, which is not offered by an entity described above.

When engaging in speaking or writing in a private capacity, an Immigration Judge may not use nonpublic information, nor should there be any use of the Immigration Judge's official title, except as part of other biographical information, or for an article in a scientific or professional journal where there is a disclaimer. An Immigration Judge may not use official time, or that of another employee, to prepare materials. Immigration Judges must seek prior supervisory and ethics approval for written work and speeches.

## **XXII. Fundraising** **(5 C.F.R. § 2635.808)**

An Immigration Judge may engage in fundraising in a personal capacity as long as the Immigration Judge does not solicit from subordinates or persons having business with the Department, and does not use his or her official title or position. However, an Immigration Judge may use or permit the use of the term "the Honorable" while fundraising in his/her personal capacity, since Immigration Judges are ordinarily addressed using this general term. In addition, soliciting may not be conducted on government property. Immigration Judges may not engage in fundraising, including active participation in a fundraiser, in their official capacity unless authorized by statute, Executive Order, regulation, or agency determination. The only authorized fundraising in the Department is on behalf of the Combined Federal Campaign. However, an Immigration Judge may be authorized to give an official speech at a fundraising event, if the circumstances are appropriate, even though this constitutes participating in a fundraiser.



**XXIII. Just Financial Obligations**  
**(5 C.F.R. § 2635.809)**

An Immigration Judge shall satisfy in good faith his or her obligations as a citizen, including all just financial obligations imposed by law, especially those such as Federal, state or local taxes, and child support payments.

**XXIV. Purchase of Forfeited Property**  
**(5 C.F.R. § 3801.104)**

Without prior written approval, an Immigration Judge may not purchase, directly or indirectly, or use property that has been forfeited to the Government and offered for sale by the Department of Justice or its agents. Similarly, no Immigration Judge may use property forfeited to the United States that has been purchased, directly or indirectly, from the Department of Justice or its agents by the Immigration Judge's spouse or minor child.

**XXV. Gifts from Outside Sources**  
**(5 C.F.R. §§ 2635.201 to 2635.205)**

An Immigration Judge may not solicit or accept a gift given because of his or her official position, or from a prohibited source. A "prohibited source" is any person who:

- (1) has or seeks official action or business with EOIR;
- (2) is regulated by EOIR;
- (3) has interests that may be substantially affected by the performance of an EOIR Immigration Judge's official duties; or
- (4) is an organization composed mainly of persons described above.

**XXVI. Gifts that may be Permissible**  
**(5 C.F.R. §§ 2635.201 to 2635.205)**

Unless the frequency of the acceptance of gifts would appear to be improper, an Immigration Judge may accept:

- (1) items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and items of little value such as plaques and greeting cards.



**(2) gifts based on a personal relationship when it is clear that the motivation is not the Immigration Judge's official position.**

**(3) gifts of \$20 or less per occasion, not to exceed \$50 in a year from one source.**

**(4) discounts and similar benefits offered to a broad class, including a broad class of government employees.**

**(5) most genuine awards and honorary degrees, although in some cases an Immigration Judge will need a formal determination.**

**(6) free attendance, food, refreshments and materials provided at a conference or widely attended gathering or certain other social events that an Immigration Judge attends in his or her official capacity, and for which the Immigration Judge has received prior approval from his or her component.**

**When Immigration Judges are participating in their official capacity as speakers or panel members at a conference or other event, they may accept an offer of free attendance at the conference or event on the day of their presentation. Participation in the event on that day is viewed as a customary and necessary part of the Immigration Judge's duties, and is not considered a gift to them or to the Department. 5 C.F.R. § 2635.204(g)(1).**

**When it is determined that an Immigration Judge's attendance at all (or an appropriate part) of an event is in the interest of the Department because it will further agency programs and operations, the Immigration Judge may accept an unsolicited gift of free attendance from the sponsor of the event if the event is found to be a widely attended gathering. A gathering is widely attended if a large number of people are expected, and persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession. 5 C.F.R. § 2635.204(g)(2).**

**A determination that an Immigration Judge's attendance at a widely attended gathering is in the interest of the Department may be made orally or in writing. However, if the person extending the invitation has an interest that may be substantially affected by the performance or nonperformance of the Immigration Judge's official duties, or is an association or organization the majority of whose members have such interests, the determination must be made in writing. 5 C.F.R. § 2635.204(g)(3).**

**(7) gifts based on an outside business relationship, such as travel expenses related to a job interview.**

*Note: An Immigration Judge should return gifts not meeting the exceptions or contact the Deputy Designated Ethics Officer on how to dispose of them. Perishable items may be given to charity or shared by the office, with approval.*

**XXVII. Gifts between Employees**  
**(5 C.F.R. §§ 2635.301 to 2635.304)**

Immigration Judges may not give, or solicit a contribution for, a gift to an official superior, nor may they accept a gift from an employee receiving less pay. There are a few exceptions to this general prohibition, however. On annual occasions where gifts are traditionally given, such as birthdays, Christmas, and Boss's Day, an Immigration Judge may give the following to an official superior:

- (1) items, other than cash, valued at \$10 or less;
- (2) items such as food and refreshments to be shared in the office; and
- (3) personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends.

On special, infrequent occasions, such as marriage, illness, or the birth of a child, or an occasion that terminates the supervisor/subordinate relationship, an Immigration Judge may give an official superior a gift (in excess of the \$10 value) that is appropriate to the occasion. In addition, an Immigration Judge may solicit voluntary contributions of nominal amounts from fellow Immigration Judges, but not subordinates, to contribute to the gift.

**XXVIII. Frequent Flyer Miles and Airline "Compensation"**  
**(41 C.F.R. § 301)**

Some airlines encourage those purchasing tickets to join frequent flyer programs that award free flights and other benefits to frequent flyers. Pursuant to 41 C.F.R. § 301-53.3, Immigration Judges may keep and use for their personal benefit frequent flyer miles accrued incident to government official travel.

Similarly, pursuant to 41 C.F.R. § 301-10.117, Immigration Judges may retain any compensation (e.g., roundtrip airline ticket) an airline gives if they voluntarily surrender their reserved seat on a flight, and if: 1) voluntarily vacating the seat does not interfere with the Immigration Judge's performance of duties; 2) the Immigration Judge bears, and is not reimbursed for, any additional travel expenses incurred as a result of vacating the seat; and 3) the



Immigration Judge is charged leave if taking a later flight incurs additional duty time in a travel status. If the airline involuntarily denies boarding to an Immigration Judge, the Immigration Judge must give EOIR any compensation an airline gives to him or her. 41 C.F.R. § 310-10.116.

**XXIX. Seeking Other Employment**  
(5 C.F.R. §§ 2635.601 to 2635.606)

An Immigration Judge may not take official action on a matter that can affect the financial interest of a person or organization with which he or she is negotiating or has an arrangement for future employment. The remedy is disqualification. 18 U.S.C. § 208.

An Immigration Judge also must disqualify himself or herself from working on a matter when he/she is merely *seeking* employment and is not yet actually negotiating for a job. An Immigration Judge is considered to be seeking employment if he/she sends a resume to a potential employer or if he/she is approached by someone about a position with a potential employer and the Immigration Judge responds in any way other than to clearly decline interest.

See OPPM 05-02, Procedures for Issuing Recusal Orders In Immigration Proceedings.

**XXX. Post-Employment Restrictions**  
(18 U.S.C. § 207 and 5 C.F.R. § 2641)

There are statutory prohibitions on former Immigration Judges that generally prevent them from "switching sides" after leaving government. The following are the primary restrictions:

(1) **Lifetime Ban** – A former Immigration Judge is prohibited from representing anyone else before the government on a particular matter involving specific parties in which he or she participated personally and substantially.

(2) **Two-Year Ban** – A former Immigration Judge is prohibited for two years from representing any other person on a particular matter involving specific parties which was pending under his or her responsibility during the Immigration Judge's last year of government service.

**XXXI. Political Activities**  
**(5 C.F.R. Parts 733 & 734)**

**In regard to political activity, Immigration Judges may:**

- (1) register and vote as they choose.**
- (2) assist in voter registration drives.**
- (3) express opinions on candidates and issues.**
- (4) be a candidate for public office in non-partisan elections.**
- (5) solicit, accept, or receive political contributions from a fellow member of a Federal labor or employee organization who is not a subordinate, and the request is for a contribution to the multicandidate political committee of a Federal labor organization or to the multicandidate political committee of a Federal employee organization in existence on October 6, 1993.**
- (6) contribute money to political organizations, in general.**
- (7) attend and be active at political rallies and meetings.**
- (8) attend political fundraisers.**
- (9) join and be an active member of a political party or club.**
- (10) sign nominating petitions.**
- (11) campaign for or against referendum questions, constitutional amendments, and municipal ordinances.**
- (12) distribute campaign literature in partisan elections.**
- (13) make campaign speeches for candidates in partisan elections.**
- (14) campaign for or against candidates in partisan elections.**
- (15) hold office in political clubs and parties.**

**Immigration Judges may not:**

- (1) be a candidate in a partisan election.**

(2) engage in political activity on duty, in a government office, wearing an official uniform, or using a government vehicle.

(3) solicit, accept or receive political contributions from another person - except as described in paragraph (5), above.

(4) solicit or discourage the political activity of anyone who has business with the Department.

(5) use official authority or influence to interfere with an election.

(6) wear political buttons while on duty.

*Note: In 1993, Congress amended 18 U.S.C. § 603, which governs political contributions by Federal employees to their employer or employing authority. The original statute had been interpreted as potentially prohibiting all Executive branch employees from making political contributions to the reelection campaign committee of an incumbent President. However, by memorandum dated May 2, 1995, the White House issued an opinion that states that based on the Hatch Act Reform Amendments of 1993, 18 U.S.C. § 603 would no longer prohibit employees from making contributions to the reelection campaign of an incumbent President.*

#### **XXXII. Ex Parte Communications**

An Immigration Judge should not initiate, permit, or consider ex parte communications, or consider other communications made to the Immigration Judge outside the presence of the parties or their lawyers, concerning a pending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided that the Immigration Judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication.

(2) An Immigration Judge may consult with court staff and court officials, including supervisors, whose functions are to aid the Immigration Judge in carrying out the Immigration Judge's adjudicative responsibilities, or with other Immigration Judges, provided the Immigration Judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility to personally decide the matter.



**(3) An Immigration Judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.**

**If an Immigration Judge inadvertently receives an unauthorized ex parte communication bearing on the substance of a matter, the Immigration Judge should make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond, or to recuse himself or herself if appropriate.**

#### **XXXIII. Mechanism for Continuing Dialog**

**It is understood that the Agency will be providing Immigration Judges with examples relating to the provisions of the Guide. Within thirty (30) days of the effective date of this Guide, each of the parties will designate a person to act as a point of contact (POC) for any updates to the examples.**

**The NAIJ POC may communicate with the Agency POC any questions or topics about which it would be useful to have an example relating to the Guide. In addition, the NAIJ POC may submit for consideration for use as examples ethics inquiries and answers received by Judges which NAIJ believes would be of general interest.**

**The Agency POC will consider all suggestions submitted by the NAIJ POC and will notify the NAIJ's POC with the provisions of any updates at least one week prior to any updates. The designated NAIJ POC under this provision will be provided official time to perform a reasonable amount of work associated with these duties.**

#### **XXXIV. Disciplinary Action or Action for Failure to Follow the Guide**

**In the event of conflicting requirements between the provisions of this Guide, the Standards of Ethical Conduct for Executive Branch Employees, the bar rules governing an Immigration Judge's conduct, and/or any oral or written instruction from the Agency, the Immigration Judge should seek appropriate guidance under Article III above. Disciplinary action will not be taken against an Immigration Judge who has engaged in good-faith reliance upon the advice of an agency ethics official in accordance with the Note in Article III. Further, if after consultation with an agency ethics official, the ethics official refers the Immigration Judge to a bar for guidance, compliance with that guidance shall be a defense to disciplinary action against an Immigration Judge.**

**An Immigration Judge against whom disciplinary or other employment action is taken as a result of an alleged violation of this Guide may avail himself/herself of any rights under the Collective Bargaining Agreement,**

including but not limited to the grievance and arbitration procedures under Articles 8 and 9, or any other applicable provision of law or regulation.

The Agency will not cite the specific provisions of this Guide as a basis for disciplinary or other employment action until six months after ratification of the Guide by members of NAIJ and approval by the head of the Agency.


IN WITNESS WHEREOF, on this 26th day of January, 2011, the Executive Office for Immigration Review and the National Association of Immigration Judges have agreed to the provisions of this Ethics and Professionalism Guide for Immigration Judges.

**FOR THE AGENCY:**



**Mary Beth Keller**  
Assistant Chief Immigration Judge  
Office of the Chief Immigration Judge  
Executive Office for Immigration Review

**FOR NAIJ:**

 1/31/11  
**Denise Noonan Slavin**  
Vice President  
National Association of Immigration Judges



U.S. Department of Justice

OCT 7 2015

Washington, D.C. 20530

MEMORANDUM FOR ALL DEPARTMENT EMPLOYEES

FROM: Lee J. Lofthus  
Assistant Attorney General for Administration and  
Designated Agency Ethics Official

A handwritten signature in blue ink, appearing to read "Lee J. Lofthus".

SUBJECT: Off-Duty Conduct

The recent participation of some federal employees in a range of activities that have brought discredit on the government raises concern about the level of awareness on the part of Department employees regarding your obligation to refrain from off-duty conduct that may negatively impact their ability to perform their jobs or distract from the Department's mission. The following sets forth the basis for the expectation that Department employees will comport themselves appropriately on and off the job; explains the legal foundation for the principle that off-duty conduct may be grounds for discipline; and gives examples of off-duty activities that have resulted in employee discipline.

BACKGROUND

Executive Order 12674 as modified by Executive Order 12731 provides that "Public Service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain." Relevant to activities outside of the workplace, the Executive Order states that

Employees shall [1] satisfy in good faith their obligations to citizens, including all just financial obligations...that are imposed by law...[2] adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap...[and 3] avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

Office of Personal Management Regulations provide at 5 CFR 735.203 that

[a]n employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

Additional specific provisions of relevant statutes and regulations require federal employees to pay our just financial obligations, prohibit gambling on federal property, and bar illegal drug use at all times.

### NEXUS TO OFFICIAL DUTIES

You may be disciplined for off-duty conduct if there is a nexus (connection) between the offending conduct and the employee's job-related responsibilities such that the proposed discipline would "promote the efficiency of the Service." See 5 U.S.C. § 7513(a).

An agency may show nexus between off-duty misconduct and the efficiency of the service by three means: (1) a rebuttable presumption in certain egregious circumstances; (2) preponderant evidence that the misconduct adversely affects the appellant's or co-workers' job performance or the agency's trust and confidence in the appellant's job performance; or (3) preponderant evidence that the misconduct interfered with or adversely affected the agency's mission. *Hoofman v. Department of the Army*, 112 M.S.P.R. 532, ¶ 16 (2012). This most often applies where the employee engages in the very type of behavior which the agency and/or the employee is charged with preventing or addressing. *Brown v. Department of the Navy*, 229 F.3d 1356, 1361 (Fed. Cir. 2000); *Prather v. Department of Justice*, 117 M.S.P.R. 137, ¶ 32 (2011).

Some off-duty conduct is considered to be so egregious that the nexus between the conduct and federal employment "speaks for itself" and raises a rebuttable presumption of nexus to the efficiency of the service. *Graham v. U.S. Postal Service*, 49 MSPR 364, 367 (1991). For example, there is an automatic presumption that a federal employee's commission of a violent crime adversely affects the efficiency of the service and is so grievous as to raise a rebuttable presumption that discipline is appropriate. *Hayes v. Department of the Navy*, 727 F.2d 1535, 1539 (Fed. Cir. 1984). Similarly, sexual misconduct with minors is regularly held to provide a presumption of nexus warranting removal. *Graham*, 49 M.S.P.R. at 367.

Higher-level employees and those entrusted with sensitive responsibilities, including attorneys and law enforcement officers, are subject to closer scrutiny and greater potential discipline for off-duty misconduct reflecting on honesty and integrity than those employees with less responsibilities. For example, law enforcement officers are entrusted with responsibilities (such as conducting arrests, searches and seizures, and providing testimony in criminal proceedings) which, if abused, could severely impact the lives of innocent people. Therefore, law enforcement officers may be more severely punished than other federal employees for many types of off-duty misconduct that reflect negatively on their ability to perform their official duties, and/or may be punished for some conduct for which other employees would not be punished at all. *Prather*, 117 MSPR 137, ¶ 36.

One of law enforcement officers' most important responsibilities is to provide objective and unbiased testimony during criminal and related proceedings. Federal Rule of Evidence 608(b) allows defense counsel to impeach an officer during cross examination by asking about specific instances of past conduct which are probative of veracity or bias. *Giglio v. United States*, 405 U.S. 150, 154 (1972); *Brady v. Maryland*, 373 U.S. 83 (1971). Accordingly, while the most serious misconduct -- e.g., the commission of a violent crime or illegal drug use -- may well be the

basis for criminal prosecution, any off-duty conduct on the part of a law enforcement officer that would undermine his or her credibility or demonstrate bias could adversely affect the ability of such officer to perform his or her official duties, and could reasonably be a basis for management's loss of confidence in the employee's ability to adequately perform his or her job, can therefore be a basis for discipline. *Nguyen v. Department of Homeland Security*, 737 F.3d 711, 715-17 (Fed. Cir. 2013).

Specific off-duty conduct which has resulted in federal employees being disciplined, and in some cases removed from federal service, includes:

- sexual misconduct;
- racist or sexist remarks or conduct;
- threats against coworkers or supervisors;
- fraud
- falsification to obtain employment, employment benefits, workers compensation, disability, or sick leave;
- failure to pay just debts, including taxes;
- misuse of a government credit card; and
- conflicts of interest (improper use of one's official position for private gain).

The Attorney General previously reminded all employees that they are prohibited from soliciting, procuring, or accepting commercial sex. This rule applies at all times during an individual's employment, including while off-duty or on leave, and applies regardless of whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic. Department personnel are also reminded that marijuana is still a controlled substance under Schedule I of the Controlled Substance Act and knowing and intentional possession is illegal, regardless of whether individual states have decriminalized the use of marijuana and allowed its use in certain circumstances. All federal employees are required to refrain from the use of illegal drugs, whether on or off duty. Executive Order 12564, Drug-Free Federal Workplace.

Attached to this memorandum is a summary of the ethics and related rules that apply to our conduct and activities, on and off-duty, or on personal leave. Individual components may issue additional guidance on applying the rules to specific circumstances, including conduct while overseas. Employees who have questions about these rules or the Department's policies should consult their supervisors, Human Resources or their Deputy Designated Agency Ethics Official.

Attachment



# **Ethics Handbook for On and Off-Duty Conduct**

**U.S. Department of Justice  
January 2016**



## **INTRODUCTION**

This Ethics Handbook for On and Off-Duty Conduct summarizes the principal ethics laws and regulations governing the conduct of Department of Justice employees. The purpose of this handbook is to increase your awareness of the ethics rules and their applications, including when you are not in a duty status or are on leave. We have included citations after each rule and we suggest that you consult the full text of the law or regulation when you have specific questions.

The ethics rules condensed here include the conflict of interest statutes found at 18 USC §§ 202 to 209, Executive Order 12674 on Principles of Ethical Conduct as amended by EO 12731, the Uniform Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR Part 2635, Department of Justice regulations at 5 CFR Part 3801 that supplement the uniform standards, and additional Department regulations at 28 CFR Part 45, and Executive branch-wide standards of conduct at 5 USC § 735.

The Designated Agency Ethics Official (DAEO) for the Department is the Assistant Attorney General for Administration. The Departmental Ethics Office is responsible for the overall direction for the ethics program in the Department. Each Bureau, Office, Board and Division has a Deputy DAEO who should be your first contact for advice. Your component may have additional guidance that addresses specific circumstances, in particular with off-duty conduct and employees serving in foreign countries. Employees are responsible for knowing and adhering to any component specific guidance.

The ethics statutes and regulations may be found on the [website of the Departmental Ethics Office](#). If you do not have access to the internet, contact your Deputy DAEO to obtain a paper copy of the regulations. If you do not know who your ethics official is, call the Departmental Ethics Office on (202) 514- 8196 or consult the website for a [list of ethics officials within the Department](#).

Some of these rules require analysis when applying them to specific situations. You should use this handbook as a means of keeping yourself apprised of the general prohibitions, but you should always seek advice from an ethics official if you are contemplating an action that you think might be covered by the rules, especially where it may be necessary to obtain a waiver or approval in advance.

Generally, an employee who provides all the facts to an ethics official and follows the advice given will not later be disciplined for violating the standards of conduct if subsequent inquiry reveals a possible violation consistent with the facts provided. Heads of components in consultation with the appropriate Deputy DAEO grant most formal determinations on ethics questions, including waivers and approvals.

We hope you will find this handbook useful

The Departmental Ethics Office

## **14 General Principles of Ethical Conduct**

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except as permitted by [these standards of conduct], solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to the appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

## **14 General Principles of Ethical Conduct Continued**

13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts

*5 C.F.R 2635.101 (b)*



# Ethics Handbook

## **Conduct Prejudicial to the Government**

An employee shall not engage in criminal, infamous, dishonest, immoral or disgraceful conduct, or other conduct prejudicial to the government. In connection with overseas service, the State Department has defined notoriously disgraceful conduct as conduct which, were it to become widely known, would embarrass, discredit, or subject to opprobrium the perpetrator and the United States.

*5 CFR 735.203, 3 FAM 4139.14*

## **Gambling**

An employee is prohibited from participating in any gambling activity while on-duty or on government property, although there is an exception for activity necessitated by the employee's official duties. Employees must seek and adhere to their component's guidance on such gambling activity.

*5 CFR 735.201*

## **Commercial Sex**

An employee is at all times prohibited from soliciting, procuring, or accepting commercial sex, whether on or off-duty or on personal leave, and regardless whether the activity is legal or tolerated in a particular jurisdiction, foreign or domestic.

*Attorney General Memorandum, April 2015*

## **Intoxicants**

An employee is prohibited from habitually using alcohol or other intoxicants to excess. Components may have more specific guidance and limitations, including for off-duty alcohol use. Employees must know and adhere to the specific limitations that apply to the employee.

*5 USC 7352*

## **Just Financial Obligations**

An employee shall satisfy in good faith the obligations as a citizen, including all just financial obligations, especially those – such as Federal, state and local taxes– that are imposed by law.

*5 CFR 2635.809*



**Equal  
Opportunity**

An employee shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, age or handicap.

*5 CFR 2635.101 (b)(13), 5 USC 2302*

*EO 13087, EO 13672*

**Appearance of  
Impropriety**

An employee shall endeavor to avoid any actions creating the appearance that the employee is violating the law or the ethical standards set forth in this part.

*5 CFR 2635.101(b)(14)*

**Nepotism**

An employee may not appoint, employ, or promote a relative to a position in the Department, or advocate a relative for appointment, employment, promotion or advancement. Employees should be cautious when assisting in any way relatives who are seeking employment, appointment, or advancement in Department positions.

*5 USC 3110*

**Security  
Clearances**

As a reminder for employees for whom a security clearance is required for performance of their official duties, any above - noted prohibited conduct, and more, may be grounds for suspension or revocation of a clearance. This could also result in adverse disciplinary action, including suspension or removal. Consult your security program manager for more guidance.

# **Misuse of Official Position**

## **General Rule**

You may not use your public office for your own private gain or for the gain of persons or organizations with which you are associated personally. Your position or title shall not be used: to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to you or to friends, relatives, or persons with whom you are affiliated in a nongovernmental capacity; to endorse any product or service; or to give the appearance of governmental sanction. For example, you may use your official title and stationery only in response to a request for a reference or recommendation for someone you have dealt with in Federal employment or someone you are recommending for Federal employment.

*5 CFR 2635.702*

## **Use of Government Property and Time**

Generally, you should be mindful of your responsibilities to make an honest effort to use government property and official time, including the time of a subordinate, for official business only, and to protect and conserve government property. However, as a Justice Department employee, you are generally authorized to make minimal personal use of most office equipment and library facilities where the cost to the government is negligible and where it does not interfere with official business, where permitted by security rules, and on your own time. This limited personal use is a privilege, not a right, and employee use must conform to all restrictions. Employees may not use government property including computer systems and individual electronic devices for commercial purposes; to send solicitations, lobby, or engage in prohibited political activity; for activities that are illegal, inappropriate or offensive to fellow employees or the public; or to create, download, view, or store, copy or transmit sexually explicit or sexually oriented materials or materials related to illegal gambling, illegal weapons, terrorist activities or other illegal activities; or any other prohibited uses as set forth in Department and component orders or guidance. Employees may not use Government equipment as a substitute for personally-owned equipment. Personal activities should be conducted on personal equipment, except to the minimal degree that personal use on Government equipment is permitted by Department policy.

You may not use your DOJ contact information including email address for non-official matters except as emergency contact information and for persons such as close family and friends, children's school, and in similar limited circumstances, where it is clear your communication is not on behalf of the Department and you are not attempting to exert official influence.

*5 CFR 2635.704, DOJ Order 2740.1A  
28 CFR 45.4*

## **MISUSE OF OFFICIAL POSITION**

### **Government Vehicles**

Use of government vehicles is governed by statute, including penalties for misuse. Employees should consult their components' guidance for authorized use of government vehicles

*31 USC 1344 & 1349 (b)*

### **Use of Nonpublic Information**

You may not engage in a financial transaction using nonpublic information or allow the use of such information to further your private interests or those of another. Nonpublic information is information you gain on the job, which has not been made available to the general public, and is not authorized to be made available on request such as through the FOIA. (There are also statutory prohibitions on the misuse of information involving national security, trade secrets, individuals and government procurement.)

*5 CFR 2635.703, 5 USC 522 & 522a*

*18 USC 798, 50 USC 783 (a)*

*18 USC 1905, 41 USC 423 (a) & (b)*

## **Political Activities**

### **The Hatch Act**

All federal employees may vote, express opinions and make political contributions. Under the Hatch Act, active participation in partisan political activities by federal employees is restricted, and employees serving in certain positions are more restricted than others. All federal employees are barred from using their official authority or influence to interfere with an election, from engaging in political activity while on duty, in a government office, wearing an official uniform or using a government vehicle, and from soliciting or discouraging the political activity of anyone who does business with the Department. The rules are specific and may be complex. Any employee seeking to actively engage in partisan political activity should consult the guidance available on the Department's website, and the guidance issued by his or her component.

*5 USC §§ 7321-21*

*5 CFR 733 & 734*

#### **Employees May Not:**

- Use official authority or influence to interfere with or affect the result of an election.
- Participate in political activities (to include wearing political buttons) while on duty; while wearing a uniform, badge or insignia of office; while in a government occupied office or building; or while using a government owned or leased vehicle.
- Solicit, accept or receive a political contribution from a member of the public.
- Solicit political contributions in a speech given at a fundraiser.
- Sponsor a fundraiser.
- Allow official title to be used in fundraising or other political activities.

- Solicit, accept or receive uncompensated volunteer services from a subordinate.
- Be a candidate for partisan political office except as an independent candidate in certain communities.
- Solicit or discourage the political activity of anyone who is a participant in any matter before the Department.

**Most Employees May:\***

- Express opinions on political subjects and candidates.
- Campaign for or against a referendum, constitutional amendment or ordinance.
- Participate in civic, professional and other similar activities.
- Sign a political petition.
- Display signs, stickers, badges or buttons for candidates for partisan political office except when on duty.
- Register and vote.
- Run as a candidate or support a candidate in a non-partisan election.
- Contribute to a political party, or a candidate in a partisan election.
- Join, organize and serve as an officer of a political party or group.
- Address a convention, caucus, rally or similar gathering of a political party for or against a partisan political candidate.
- Participate in a nominating caucus, convention, rally or other political gathering.
- Initiate and circulate a nominating petition for a partisan candidate.
- Canvass for votes for or against a candidate for partisan political office.
- Endorse or oppose a partisan political candidate.
- Participate in and manage the campaign of a partisan political candidate.
- Serve as a poll watcher, election judge or clerk for a partisan candidate or party.
- Drive voters to polls on behalf of a partisan political candidate or party.
- Attend, address, but not solicit funds, at a political fundraiser.
- Solicit, accept or receive volunteer services except from a subordinate.
- Solicit, accept or receive certain contributions from a fellow member of a federal labor organization or other employee organization who is not a subordinate.
- Run as an independent candidate in a partisan election in certain communities and accept and receive but not solicit contributions from the public.

**\*In DOJ, political appointees, career SES, ALJs, explosives enforcement officers in the ATF, and employees of the Criminal Division, the FBI, and the National Security Division are further restricted with regard to political activities, and may NOT engage in many of these actions. These employees should seek specific guidance from their ethics official before engaging in any partisan political activity.**



# **Outside Employment and Activities**

## **General Rule**

You should not engage in any outside employment or other activity that conflicts with your official duties and responsibilities. Employees are prohibited from engaging in outside employment that involves criminal matters, the paid practice of law or matters in which the Department is a party or represents a party. Only the Deputy Attorney General may waive these prohibitions.

*5 CFR 2635.802*

*5 CFR 3801.106*

## **Approval for Certain Outside Activities**

You are required to obtain written approval for certain employment including the practice of law that is not otherwise prohibited, and any outside employment involving a subject matter related to the responsibilities of your component.

*5 CFR 3801.106*

## **Representing Others**

You may not receive compensation for the representation of anyone before a federal agency or official, or before any court in a matter in which the U.S. is a party or has a substantial interest. This prohibition applies whether or not you render the representation yourself.

*18 USC 203*

You also may not represent someone in connection with a claim against the United States or before a federal agency or official, or before any court, with or without compensation, in a matter in which the U.S. is a party or has a substantial interest.

*18 USC 205*

There are exceptions to the above statutes for representing your immediate family, testifying under oath, representing another employee in personnel administration proceedings, and representing employee organizations, in certain matters.

**Fundraising**

You may engage in fundraising in your personal capacity, off-duty, as long as you do not solicit your subordinates or persons having business with the Department. There is an exception for mass mailings that do not target the above persons. You may not engage in fundraising in your official capacity unless authorized by statute, executive order or regulation (e.g., the Combined Federal Campaign). There is an exception for giving an official speech at a fundraiser, when specifically authorized in advance after disclosure of all facts and circumstances regarding the event.

*5 CFR 2635.808*

**Service as an  
Expert  
Witness**

You may not serve as an expert witness in your private capacity in any proceeding before the United States in which the U.S. is a party or has an interest unless specifically authorized.

*5 CFR 2635.805*

**Honoraria**

You may not be paid by anyone but the Government for speaking or writing undertaken as part of your official duties.

*18 USC 209*

**Outside  
Teaching  
Speaking and  
Writing**

When you are teaching, speaking or writing in your private capacity, you may not use nonpublic information, nor should there be any use of your official title except as a biographical detail or where there is a disclaimer. Generally, you may not be compensated for teaching, speaking, or writing that relates to your official duties. However, there is an exception for teaching in certain educational settings. If you are a career employee, or non-career employee classified at GS-15 and below, what relates to your duties is a present or recent assignment, or a policy, program or operation of your component. If you are a non-career employee above GS-15, what relates to your duties is broader, and you must have advance authorization from the DAEO before engaging in teaching for compensation. You may not use your official time or that of a subordinate to prepare materials. Some components require advance review and clearance for certain written work and speeches.

*5 CFR 2635.703, .705 &.807*

*5 CFR 2636.307*

**Gifts,  
Entertainment  
And Favors From  
Outside  
Sources**

## **ACCEPTING GIFTS AND THINGS OF VALUE**

You may not solicit or accept a gift 1) given because of your official position, or 2) from a prohibited source, which includes anyone who:

- Has or seeks official action or business with the Department;
- Is regulated by the Department;
- Has interests that may be substantially affected by the performance of your official duties; or
- Is an organization composed mainly of person described above.

**The definition of a gift is broad.** It includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

**If you are offered a gift and you do not know the source, in circumstances where you cannot be certain it is a permissible gift, you should decline.**

A gift does not include items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and items of little value such as plaques and greeting cards.

Unless the frequency of the acceptance of gifts would appear to be improper, you may accept:

- Gifts based on a personal relationship when it is clear that the motivation is not your official position.
- Gifts of \$20 or less per occasion not to exceed \$50 in a year from the same source.
- Discounts and similar benefits offered to a broad class, including a broad class of government employees.
- Most genuine awards and honorary degrees related to public service although in many cases you will need prior approval.

## **ACCEPTING GIFTS AND THINGS OF VALE**

- Free attendance, food, refreshments and materials provided at a conference or widely attended gathering or certain other social events which you attend in your official capacity, with prior written approval. If you are invited to an event by someone other than the sponsor, the cost must not exceed \$375 and at least 100 people must be expected to attend.
- Gifts based on an outside business relationship such as travel expenses related to a job interview, as long as you are recused from matters affecting the donor.

*5 USC 7353, 5 CFR 2635.202-204*

You should return gifts not meeting the exceptions or contact your Deputy DAEO on how to dispose of them. Perishable items may be given to charity or shared by your office, with approval.

*5 CFR 2635.205*

**Supplementation** You may not receive any payment, or supplementation, of your government salary from any source except the Government for performing your duties.

**Foreign Gifts** You are allowed to accept certain gifts from foreign governments and their representatives if they do not exceed a minimal value presently set at \$375. In addition, if approved in advance, employees may accept travel expenses from a foreign government for travel taking place entirely outside of the United States. Gifts whose value exceeds the minimal value are deemed to be accepted on behalf of the United States and may not be kept by the employee. In addition, an employee may accept meals and refreshments while in a foreign country provided by non-government persons in the course of a meeting when the employee is performing official duties, and where the event includes non- U.S. citizens or representatives of a foreign government or other entities. **Employees are responsible for knowing and adhering to their component's procedures for approval and reporting of gifts from foreign governments or accepted while in a foreign country, and any component specific restrictions.**



## **ACCEPTING GIFTS AND THINGS OF VALUE**

### **Gifts to Superiors**

You may not give, or solicit a contribution for, a gift to an official superior, and you may not accept a gift from an employee receiving less pay than you if employee is a subordinate. There is an exception for voluntary gifts of nominal value made on special occasion such as marriage, illness or retirement. You also may give an individual gift to a superior costing \$10 or less, and contribute to shared food and refreshments in the office.

*5 USC 7351, 5 CFR 2635.302 &.304*

### **Travel**

Generally, you may not accept reimbursement for travel and related expenses from any source other than the Government when you are traveling on official duty. However, with prior written approval, DOJ may accept travel expenses incidental to your attendance at conferences or similar functions related to your duties from non-Federal sources pursuant to the GSA regulations cited here. Travel expenses for a spouse accompanying you on official travel may not be accepted.

Consult your Deputy DAEO on obtaining approval for yourself.

You may retain for personal use benefits from commercial sources, including bonus flights, that result from official travel. You may keep a bonus offered when you volunteer to take a later flight as long as the delay does not interfere with the conduct of your duties and you do not charge the Government for additional costs, but you may not keep such a bonus if you are bumped from a flight. In most cases, you may not travel other than coach class when on official business.

*41 CFR 301  
41 CFR 304*

# **CONFLICTS OF INTEREST**

Your nonfederal financial holdings and your outside activities and relationships can trigger the applicability of the conflict of interest statutes and regulations. Below are summaries and examples of how the conflict of interest rules may become applicable to you.

## **General Rule**

You should avoid situations where your official actions affect or appear to affect your private interests, financial or non-financial.

## **Statutory Prohibition**

You may not participate personally and substantially in a matter in which you, your spouse, minor child or general partner has a financial interest. This prohibition also applies if an organization in which you serve as officer, director, trustee, or employee has a financial interest or if a person or organization with which you are negotiating for future employment has a financial interest.

*18 USC 208*

## **Impartiality Standard**

Generally, you should seek advice before participating in any matter in which your impartiality could be questioned. You may not participate without authorization in a particular matter having specific parties that could affect the financial interests of members of your household or where one of the following is a party or represents a party: someone with whom you have or are seeking employment, or a business, contractual or other financial relationship; a member of your household or a relative with whom you have a close relationship; a current or prospective employer of a spouse, parent or child; or an organization which you now serve actively or have served, as an employee or in another capacity, within the past year.

*5 CFR 2635.502*

## **Purchase of Forfeited Property**

Without written approval, you may not purchase or use property that has been forfeited to the Government and offered for sale by the Justice Department.

*5 CFR 3801.104*

## **Negotiating for Future Employment**

Generally, you may not take official action on a matter affecting the financial interests of an organization with which you are negotiating or have an arrangement for a job. Generally, you must disqualify yourself from a matter in order to negotiate for a job, and employees participating in a procurement have to report to certain officials in writing before negotiating with a contractor competing for that procurement.

You may also have to disqualify yourself when you are merely seeking employment, which includes sending a resume. You should get advice from your Deputy DAEO about seeking and negotiating for employment before you begin a job search.

*18 USC 208*  
*41 USC 423*  
*5 CFR 2635.602*

## **Remedies For Conflicts**

If you have a financial conflict of interest or believe your impartiality might be questioned, you must either disqualify yourself from taking action that could affect your interest, or see your Deputy DAEO about the following alternatives:

In the case of a financial interest, you either may seek a waiver of the prohibition under 18 USC§ 208 (b), or must divest yourself of the interest. (If you are directed to divest an interest, you may be eligible to defer the tax consequences of divestiture.) Your component head may grant you a waiver if your financial interest is found to be not so substantial as to affect the integrity of your services to the Government.

*18 U.S.C. 208(b)(1)*  
*5 CFR 2634.1001-.1004*

In a case where your impartiality might be questioned, you may obtain a formal determination from your component head that the Department's interest in your participation outweighs the concern that the integrity of the Department's operations would be questioned.

*5 CFR 2635.502(d)*

When participating in matters affecting your financial interests, you have an unlimited exemption for holdings in a diversified mutual fund and for certain employee benefit plans where the holdings may be affected by the matter. In addition, you have an exemption of \$50,000 for aggregated interests in sector mutual funds that may be affected by a matter in which you participate. You also have an exemption for interests in publicly-traded securities not to exceed \$15,000 in parties to a matter, and \$25,000 per asset when participating in a matter of general applicability, such as rulemaking and drafting of most legislation, with a combined limit of \$50,000 in all entities affected by the general matter.

**Nepotism**

You may not appoint, employ, or promote a relative to a position in the Department, or advocate a relative for appointment, employment, promotion or advancement. You should be cautious when assisting in any way relatives who are seeking employment, appointment, or advancement in Department positions.

*5 USC 3110*

## **POST-EMPLOYMENT RESTRICTIONS**

**Negotiating for  
Future  
Employment**

You may not take official action on a matter affecting the financial interests of an organization with which you are negotiating or have an arrangement for a job. Generally, you would disqualify yourself from a matter in order to negotiate for a job, and employees participating in a procurement have to report to certain officials in writing before negotiating with a contractor competing for that procurement. You may also have to disqualify yourself when you are merely seeking employment, which includes sending a resume. You should get advice from your Deputy DAEO about seeking and negotiating employment before you begin a job search.

*18 USC 208*

*41 USC 423*

*5 CFR 2635.602*

**Restrictions for  
After you Leave  
Government**

There are statutory prohibitions on former government employees that generally prevent you from “switching sides” after leaving the Government. The following are the main restrictions, but see your Deputy DAEO for others:

**Lifetime Ban**

You are prohibited from communicating to or appearing before an employee of an agency or court of the Federal Government on behalf of another person, with the intent to influence, on a particular matter involving specific parties in which you participated personally and substantially while with the Government and in which the United States is a party or has interest.

*18 USC 207(a)(1)*

**Two-year Ban**

You are prohibited for two years from communicating to or appearing before an employee of a Federal court or agency on behalf of another person, with the intent to influence, on a particular matter involving specific parties which you know was pending under your official responsibility during your last year of government service and in which the United States is a party or has an interest.

*18 USC 207(a)(2)*



### **One-year Ban**

If you are a “senior employee” you are subject to an additional restriction that generally prohibits you from communicating to or appearing before an employee of the Justice Department or your component on a matter on which you seek official action on behalf of another person. Senior employees are Executive Level officials and SES, SL and ST officials compensated above \$161,755.00 as of January 2017. The threshold salary to determine which SES officials are senior officials will increase when the salary for the Executive Level II position increases.

*18 USC 207(c)*

### **One Year Ban for Certain Procurement and Contracting Officials**

If you are serving in a certain critical position or made certain critical decisions on a procurement or a contract in excess of \$10 million, you may not receive compensation from that contractor for one year.

*41 USC 423*

## **ADDITIONAL CONSIDERATIONS**

### **Supervisors**

Supervisors are responsible for demonstrating integrity in their own conduct and adherence to the letter and spirit of the ethics rules; for ensuring that employees seek advice under the ethics rules when necessary or appropriate; and for taking appropriate action to report or refer employees when misconduct has occurred or appears to have occurred.

### **Special Government Employees**

If you are a special government employee, that is, you expect to serve for no more than 130 days in a 365 day period, you are subject to most of the rules in this handbook. However, in some cases, they are applied less stringently. Consult your Deputy DAEO.

### **Attorneys**

If you are an attorney with the Department, you are expected to comply not only with the rules in this Handbook but also with relevant professional codes of conduct. Consult your [Deputy DAEO](#) or the Professional Responsibility Advisory Office for advice on which codes apply and what they require.

### **Post Employment Compensation**

There are restrictions on you receiving compensation, even after you leave, based on another’s representations before the Federal government that took place while you were still a government employee.

*18 USC 203*

## **ADDITIONAL CONSIDERATIONS**

In certain circumstances, you may not be able to maintain a financial relationship with a former employer or accept a severance payment or moving or moving expenses from a private source. Consult your Deputy DAEO for advice.

If you are an attorney, you will have to disqualify yourself in cases you handled before entering the Government, and from other matters involving your former law firm or clients for a certain period, usually several years.

Generally, you will not be allowed to remain on leave of absence from a law firm or another business entity while with the Department. See your Deputy DAEO about any repayment of your capital contributions over time or about retaining an interest in a contingent fee.

*18 USC 203, 208, & 209*

*5CFR 2635.502*

*Professional Codes*